

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1193

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PDS

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
CLAYBURN C. BOOTH,
Defendant-Appellant.

APPENDIX

HAROLD FEIN, ESQ.,
Attorney for Defendant-Appellant,
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Buffalo, New York 14202.

HILARY P. BRADFORD, ESQ.,
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TESTIMONY.

Witness for Government:

Lonardo, Dominick L.

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EXHIBITS.

Government's Exhibits:

Exhibits 43--46--Documents. Received in evidence
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Exhibit 47--Comparison of Income. Received in evidence
at page 23a. Printed at..... 87a

Defendant's Exhibits:

Exhibit 19--Document. Marked for identification at
page 33a. Not Printed.

Exhibits 20--26--Documents. Marked for identification
at page 51a. Not Printed.

Exhibit 27--Document. Marked for identification at
page 53a. Not Printed.

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

Docket Entries.

~~JOHN I. HENDERSON~~
John I. Carter

CR-1973-158.

D. C. Form No. 190 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
us.	Theodore Burns, Esq.
CLAYBURN C. BOOTH	
did wilfully and knowingly attempt to evade income tax, by filing a false and fraudulent joint income tax return, in violation of Section 7201, Title 26, U.S.C.	
	For Defendant:
	Harold Fein

Offenses: 1966, 1967, 1968 3 Cts.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk	4/16/76	# 27036	3500 ⁰⁰	3500 ⁰⁰
J.S. 3 mailed	Marshal	4/21/76	C7060		
Violation	Docket fee				
Title 26					
Sec. 7201					

DATE	PROCEEDINGS
1973	
Apr. 12	Filed Indictment
Apr. 12	J.S. 2 made
23	Defendant, being duly arraigned, enters a plea of not guilty to all counts, released on own recog.; motions ret. 5/21/73
Apr. 26	Filed Ct. Steno's Minutes of 4-23-73
May 21	Adj. two weeks, Court requests letter from Govt. re - adj.
June 1	Fld. Govt's response to Deft's oral request for discovery & Insp.
June 4	Adj. 6/18/1973
June 18	Adj. to 7/2/1973 at Request of deft.
July 2	Adj. One Week
July 9	Adj. to 7/16/1973 and Court instructs the Govt. to be prepared to advise the Court of readiness to proceed to trial.
Sept. 24	Adj. to 9:15 on 9/26/1973 for Govt. report as to volume of witnesses
1974	
Feb. 4	The Court grants adj. to Feb. 25, 1974 to permit deft. to prepare further motions. Govt. announced readiness for trial
Feb. 25	Adj. to 3/18/1974----
Mar. 18	Adj. to 4/29/1974 - Govt. instructed to notify Deft. by letter it is

Docket Entries.

DATE	PROCEEDINGS
1974	
Mar. 18	final adj.
Apr. 24	Filed Deft's notice of motion for additional information to support certain items noted in the Govt's response - pursuant to Rule 16 - of the FRCP- ret. 4/29/1974
Apr. 29	Status report. Motion have been filed by deft. adj to 5/20/1974 for Govt's response and to June 3 for Deft's answer to Govt., if necessary.
May 20	Return date for briefs - Adj. to 7/1/1974 - for Deft. to respond.
May 21	Filed Govt's response to pre-trial motion for additional discovery
June 3	Date for filing deft's answer to Govt's response, adj. to 7/1/1974
July 1	Adj. to 7-15-74 for Govt. to furnish material to Deft.
July 15	Motion-Ready for trial, the Court will send out a pre-trial order.
August 2	Filed Subpoena (DT) - to John J. Lynch served on 7/29/74
Aug. 2	Filed Subpoena (DT) - to Legal Dept. (Peter G. Esguerra) served on 7/29/74
Aug. 2	Filed Subpoena (DT) -- Dominic L. Lonardo. served on 7/31/74 to Mrs. Lonardo.
Aug. 6	Filed Subpoena (DT) -- National Health & Welfare Retirement Association, Inc. served on 7/29/74
aug. 6	Filed Subpoena (DT) -- Medical Society of the State of NY--served on 7/31/74
Aug. 8	Filed Subpoena (DT) --The State Insurance Fund--served on 8/1/74
Aug. 8	Filed Subpoena (DT) -- Metropolitan Life Insurance Co. --served on 7/31/74
Aug. 12	Filed Subpoena (DT) -- Chemold Corp.-- served on 8/1/74
Aug. 16	Filed Subpoena (DT) -- Citi Corp Services, F.L. Barker, V.P.--served on 8/12/74
Aug. 16	Filed Subpoena (DT) -- Oakridge National Laboratory-- served on 8/9/74
Aug. 20	Filed Subpoena (DT) -- Arco Nuclear Company -- served on 8/14/74
Sent. 16	Pretrial. Adj. to 2:00 P.M. on 9/23/74
Sept. 23	Pretrial. Adj. to 11/4/74
Nov. 4	Pre-Trial Conference. Adj. 11/25/74 at 2:00 P.M.
Nov. 25	Pretrial--Adj. to 2:00 pm on 12/9/74 for report
Dec. 9	Pretrial--Adj. to 1/13/75 at 2:00 PM
1975	
Jan. 9	Filed Cy. of letter to the U.S. Atty., dated 1/8/75, from Atty. Harold Fein, in regard to "3500 material"
Jan. 13	Pretrial conference. Adj. to 1/27 at 2:00 PM
Jan. 27	Pre-Trial Conference held--
Feb 18	Pretrial conference held. Adj. to 3/10/75 for further pretrial conference
Mar. 10	Pretrial conference--adj. to 4/7/75
Apr. 7	Pre trial conference--no appearance for deft. Adj. to 5/5
May 5	Pre-trial conference. Adj. 5/19/75
June 23	Pre-trial conference held. Adj. to 7/1/1975 at 9:00 a.m. for further pre-trial
July 9	Pre-trial conference held. Case ready for trial. Court orders case placed on the ready calendar for trial after 9/17/75
Aug. 6	Filed subpoena to Produce Document or object - Ronald Luke, served 8/4/75
Aug. 15	Filed subpoena (D.T.) - Norman Jansen, served 8/13/75
Oct. 2	Pre-trial conference held in the above case
1976	
Jan. 21	Govt. moves case ready for trial, before Judge Curtin, at Buffalo, N.Y., whereupon the jury is duly empanelled; trial is hereby Adj. until completion of the trial in CR-1975-35 - U.S. vs. James Williams
Jan. 23	Filed Threesubpoenas - Robert Clark, James Best, Norman M. Jansen, served 1/22/76
Feb. 2	Trial continues from 1/21/76 with the same appearances and jury, with the exception of juror number 7, who is ill and is replaced by alternate juror No. 1 - Trial is adj. until tomorrow

DATE 1976	PROCEEDINGS	CLERK'S FEES			
		PLAINTIFF		DEFENDANT	
Feb. 3	Trial continues from yesterday with the same appearances & jury. Trial is adj. until tomorrow				
Feb. 5	Filed subpoena Dominick L. Lonardo served 2/2/76				
Feb. 4	Trial continues from yesterday with the same appearances & jury trial is adj. until tomorrow				
Feb. 5	Trial continues from yesterday with the same appearances & jury Deft. moves to dismiss the Indictment. Motion denied. Jury is discharged for the night, to return tomorrow morning to begin their deliberation				
Feb. 6	Jury begins their deliberation. Jury returns with the following verdict: Count 1-Guilty. Count 2 - Guilty; Count 3- Guilty; Sentence is deferred 3/8/76				
Feb. 11	Filed subpoena ticket - Mary Lee Cassetta				
Feb. 24	Filed letter from Harold Fein, Atty., for deft., to the Court dated 2/24/76 - requesting until 3/8/76 in which to file his motion for a rehearing, and arguments on his motion originally made at the conclusion of the trial, to set the verdict aside as being against the weight of the evidence and contrary to law, as charged by the court. Sentence in this matter will be postponed until some later date to be fixed by the court. Court's endorsement on letter, granting deft's request - motions following verdict may be filed not later than 3/8/76--CURTIN, J.				
Mar. 4	Filed deft's notice of motion for an order granting a new trial, etc.				
Mar. 8	Return date for motions, Adj. 3/15/76				
Mar. 12	Filed Govt's response to deft's motion for a new trial or judgment of acquittal				
Mar. 15	Return date for govt's reply to deft's motion. Filed.				
Mar. 16	Filed Decision and Order denying deft's motion for judgment of acquittal and a motion for a new trial pur. to Rules 29 & 33 - CURTIN, J.				
Mar. 29	Sentence. Adj. 4/12/76				
Apr. 12	Deft. is sentenced as follows: On Count One of the Indictment a fine of \$3,500; On Count Two of the Indictment a fine of \$3,500. On Count Three of the Indictment a fine of \$3,500. The sentences are to run concurrently. Defendant shall have Thirty days to pay the fine. CURTIN, J.				
Apr. 16	Filed deft's notice of appeal.				
Apr. 21	Filed Judgment and order to pay fine. Curtin, J.				
Apr. 29	Filed cy. of scheduling order from the CCA - that appeal be docketed on or before 5/7/76 and that the record be filed on or before 5/29/76				

[illegible]

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-

CLAYBURN C. BOOTH

MARCH 1973 SESSION ~~XXXX~~

No. C R - 1973 - 158

Vi. T: 26, U.S.C.,
Section 7201

COUNT I

The Grand Jury Charges:

That on or about the 15th day of April, 1967, in the Western District of New York, the defendant, CLAYBURN C. BOOTH, of Niagara Falls, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1966, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed in the Western District of New York, a false and fraudulent income tax return on behalf of himself and his wife, Grete Booth, which was filed with the Internal Revenue Service, wherein it was stated that their taxable income for said calendar year was \$20,360.32, upon which said taxable income there was owing to the United States of America an income tax of \$4,480.86, whereas, he then and there well knew, that their taxable income for said calendar year was the sum of \$32,420.19, upon which said taxable income there was owing to the United States of America an income tax of \$7,765.55; in violation of Section 7201, Internal Revenue Code; Title 26, United States Code, Section 7201.

Indictment.

COUNT II

The Grand Jury further charges:

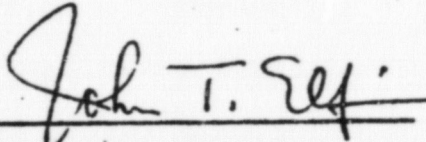
That on or about the 15th day of April, 1968, in the Western District of New York, the defendant, CLAYBURN C. BOOTH, of Niagara Falls, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1967, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed in the Western District of New York, a false and fraudulent income tax return on behalf of himself and his wife, Grete Booth, which was filed with the Internal Revenue Service, wherein it was stated that their taxable income for said calendar year was \$29,718.97, upon which said taxable income there was owing to the United States of America an income tax of \$7,490.08, whereas, he then and there well knew, that their taxable income for said calendar year was the sum of \$41,817.24, upon which said taxable income there was owing to the United States of America an income tax of \$12,047.16; in violation of Section 7201, Internal Revenue Code; Title 26, United States Code, Section 7201.

COUNT III

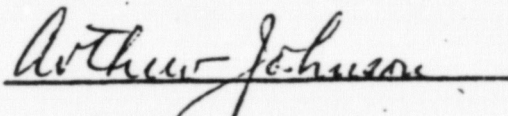
The Grand Jury further charges:

That on or about the 15th day of April, 1969, in the Western District of New York, the defendant, CLAYBURN C. BOOTH, of Niagara Falls, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and

owing by him to the United States of America for the calendar year 1968, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed in the Western District of New York, a false and fraudulent income tax return on behalf of himself and his wife, Grete Booth, which was filed with the Internal Revenue Service, wherein it was stated that their taxable income for said calendar year was \$28,707.79, upon which said taxable income there was owing to the United States of America an income tax of \$7,929.24, whereas, he then and there well knew, that their taxable income for said calendar year was the sum of \$42,380.24, upon which said taxable income there was owing to the United States of America an income tax of \$14,173.09; in violation of Section 7201, Internal Revenue Code; Title 26, United States Code, Section 7201.


JOHN T. ELFVIN
United States Attorney

A TRUE BILL:


Foreman

1 MR. BURNS: No further questions.
2 MR. FEIN: Nothing else.
3 THE COURT: Nothing further. Thank you, Mrs.
4 Balch. Next witness, please.
5 MR. BURNS: Dominick Lonardo.

6
7 * * * * *

8
9 DOMINICK L. LONARDO (2943 Seneca Avenue,
10 Niagara Falls, New York), a witness called by and in behalf
11 of the Government, having been first duly sworn, was examined
12 and testified as follows:

13
14 DIRECT EXAMINATION BY MR. BURNS:

15 Q. Mr. Lonardo, where are you presently employed?

16 A. Union Carbide in Niagara Falls, New York.

17 Q. And what is your position with Union Carbide?

18 A. I am in marketing.

19 Q. What kind of responsibilities do you have there?

20 A. I cover the price analyst area of the metallurgical
21 products. That is, carbon refractories.

22 Q. Does it involve any accounting work?

23 A. Accounting, no.

24 Q. Does it involve any work with figures?

25 A. Yes.

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- 1 Q. How long have you been doing this kind of work?
- 2 A. I have been in marketing for two and a half years now.
- 3 Q. And prior to that time, what kind of work did you do
- 4 with Union Carbide?
- 5 A. Production control.
- 6 Q. Mr. Lonardo, do you have a college degree?
- 7 A. No, I did not.
- 8 Q. Have you attended college?
- 9 A. Yes, I have.
- 10 Q. And what college did you attend?
- 11 A. Niagara University.
- 12 Q. And approximately what time period?
- 13 A. In the, - I would say in the early '50's.
- 14 Q. And did you receive a degree or a certificate of some
- 15 kind from Niagara University?
- 16 A. I received a two-year certificate of accounting at
- 17 Niagara University.
- 18 Q. And what courses did you take there leading up to this
- 19 certificate?
- 20 A. The fundamentals of accounting, intermediate accounting,
- 21 cost accounting, income tax courses, corporation
- 22 management, economics and maybe a few others, but that's
- 23 the best I could recall right now.
- 24 Q. Mr. Lonardo, do you know Dr. Clayburn Booth?
- 25 A. Yes, I do.

1 Q. Would you point him out, please. Do you see him in the
2 courtroom?

3 A. He is sitting there right next to Mr. Egan.

4 Q. Let the record reflect the witness has identified the
5 defendant. How do you know Dr. Booth, Mr. Leonardo?

6 A. How do I know him?

7 Q. Yes.

8 A. I know him as a physician and as a friend.

9 Q. When did you first meet Dr. Booth?

10 A. It was in the early '60's when he was associated with
11 a one Dr. Seidenberg who is now deceased, working with
12 him in the practice of medicine.

13 Q. And what was the basis of your relationship at that
14 time?

15 A. I was a patient of Dr. Seidenberg and when Seidenberg,
16 I beg your pardon, -Dr. Seidenberg's health was failing
17 and he was unable to take care of his patients, we were
18 referred to Dr. Booth as the man that eventually helped
19 take over his clientele or trade.

20 Q. Mr. Leonardo, have you ever performed work or services
21 of any kind for Dr. Booth?

22 A. I have been doing his bookkeeping for him.

23 Q. And do you recall approximately when you started keeping
24 his books?

25 A. I would say in perhaps '63 or '64; about '64. I would

1 say 1964.

2 Q. And how did you come to begin keeping his books for
3 him? How did that develop?

4 A. He wanted some work done for a return one year.

5 Q. An income tax return?

6 A. Yes, and at that time he was associated with-the, - I
7 believe with the DeGraff Hospital in Lockport or
8 Tonawanda, one of the two, and it was a simple return.
9 He just didn't know how to proceed to get it done and --

10 Q. Did he initiate a conversation with you regarding the
11 return?

12 A. No, he did not. It came to me in a roundabout way.
13 Dr. Seidenberg at the time was the one who was treating
14 me and he asked me if we could help Dr. Booth get his
15 return prepared for the next year and I said, well, I
16 was going to try to help him and that is how it all
17 began.

18 Q. Did you have any conversations with Dr. Booth after
19 that point?

20 A. Yes. I met him at his home with his wife and we had
21 the necessary information like W-2's and what have you
22 to help prepare the return made available and we
23 discussed those features.

24 Q. Do you recall what return that was, what year you were
25 preparing for?

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A. I would say '64, if I remember right, or '65. I don't
2 recall. I think it was '64.

3 Q. And would you tell me the conversation you had at that
4 time with Dr. Booth relating to the return?

5 A. It was a very short conversation. These were the 1099's,
6 W-2's, whatever it was that he had and we told him we
7 would prepare it to the best of our ability and see what
8 it entailed. It was a simple return. He had withholding.
9 He had no business expenses. He wasn't set up as a
10 businessman with his own practice, so to speak, and it
11 was a matter of just entering on the proper form, the
12 1040 Form the income from both his W-2 and his wife's
13 W-2.

14 Q. In the course of this conversation, did you ask Dr.
15 Booth for any information?

16 A. Just the information returns and W-2's if he had them.

17 Q. Information returns?

18 A. 1099's, if he had any such things, or W-2's, if he had
19 any, but if my memory serves me right, he had no 1099's
20 at that time. He had only W-2's.

21 Q. Did you prepare a return then for him that year?

22 A. If my memory serves me best I would have to say yes.

23 Q. And did you later perform any other services for Dr.
24 Booth besides preparing the return?

25 A. After that point the only other services I did perform

1 for him was the keeping of his books when he was in
2 his own private practice.

3 Q. And what books did you keep?

4 A. It is called a, - it is a Dome Publishing Company
5 publication called A Simplified Weekly Bookkeeping
6 Record. It is perhaps compared to a disbursements
7 journal, at best, and in this book is where I entered
8 the activities of his business.

9 Q. When did you first start doing this work?

10 A. I believe that was in '65.

11 Q. Is that shortly subsequent to preparing the return?

12 A. The '64 return, do you mean?

13 Q. No. How soon a time did you begin preparing the books
14 after you prepared the first return?

15 A. I am sorry. I don't follow you.

16 Q. Excuse me if I am not making myself clear. At some
17 point I think you testified you prepared a Federal Income
18 Tax return for Dr. Booth?

19 A. That 1964 one.

20 Q. Well, how soon after you prepared that return did you
21 begin keeping Dr. Booth's books?

22 A. Around the first or the early part of the following
23 year for the year '65 is when I started to keep the
24 weekly record for him.

25 Q. All right. Did you have a conversation with Dr. Booth

1 before you began keeping these records?

2 A. Yes. I told him that we could keep a journal of
3 records of activities rather in this record and it
4 would entail having to have access to his checkbook or
5 invoices or bills or however he paid his bills and
6 incurred these expenses.

7 Q. And what did Dr. Booth say to you?

8 A. "Fine". He says, "You could arrange to pick them up
9 whenever you want to and make your entries in the book."

10 Q. All right, and what, in fact, did you do after that
11 conversation regarding keeping the doctor's books?

12 A. I made it a point to pick up his checkbook which did
13 also have, along with the checkbook, copies of invoices,
14 bills indicating the nature of the expenditures that
15 were made over that particular month's time.

16 Q. What did you do with those records after you received
17 them?

18 A. After I received them I took them home.

19 Q. Excuse me. How did you receive them?

20 A. I went to pick them up myself at his office.

21 Q. On a monthly basis?

22 A. Yes. Well, I would go there perhaps a couple of times
23 a month. I picked them up at least every month at the
24 end of the month, say after two or three working days
25 after the end of the month so I would have a chance to

1 make sure the last transaction was recorded for that
2 month. I would pick them up myself, bring them home and
3 work on them at home.

4 Q. When you say "work on them", what did you specifically
5 do?

6 A. I recorded in the disbursements journal by date, by
7 check number, by dollar amount the actual expenditure
8 that was covered or made as shown in the checkbook."

9 Q. For what purpose?

10 A. For recording the activity of his expenditures.

11 Q. And what was the purpose of recording the expenditures
12 in this manner?

13 A. To have a record of what was actually being spent during
14 the course of --

15 Q. Why did you need to maintain the records?

16 A. I needed to maintain the records for eventually preparing
17 the returns.

18 Q. The income tax returns?

19 A. That's right.

20 Q. Did you use these records as a basis for preparing the
21 Federal Income Tax returns?

22 A. The disbursement journal was the basis or the background
23 for preparing the return, yes.

24 Q. Now, did you have any discussion with Dr. Booth during
25 any of the calendar years '66, '67 and '68 regarding

1 the, - regarding his items of income or receipts?

2 A. Yes. I asked the doctor to make sure that he would let
3 me know the receipts of his various information returns,
4 again the 1099's, that he would be receiving from, say,
5 Blue Cross, Blue Shield or any other organization that
6 would show that he had received payment for services
7 performed; W-2's from the other sources that he may have
8 had.

9 Q. Did you have these discussions with Dr. Booth on an
10 annual basis, once a year when the tax returns were
11 about to be prepared?

12 A. Yes. At the end of the year I would always make sure
13 he would understand the request was for letting me know
14 when they would come in and I would go down and pick
15 them up.

16 Q. Now, did you, in fact, gather all these items that you
17 have referred to from Dr. Booth yearly?

18 A. I prepared and summarized these returns, information
19 returns, W-2's in a listing of sorts that I had
20 developed myself.

21 Q. And what did you do with the information regarding these
22 receipts and the income after you had received it?

23 A. The information was entered on worksheets showing what
24 the, - each figure was, making sure that they agreed
25 with what was on the information return or W-2 and

- 1 adding them up and making sure that the total figure
2 was correct.
- 3 Q. Did Dr. Booth provide you with any information regarding
4 his office receipts for any of these calendar years?
- 5 A. I asked him for his office calls, moneys, and he gave
6 me the information on slips of paper covering each
7 month of the calendar year.
- 8 Q. How often did he give you these slips of paper?
- 9 A. When I asked for them. I asked for them at the end of
10 the year.
- 11 Q. What was written on the slips of paper?
- 12 A. The month and the dollar amount.
- 13 Q. Was there a separate slip of paper for each month?
- 14 A. Yes, there was.
- 15 Q. Were these discussions you had with Dr. Booth the same
16 for each of the calendar years '66, '67 and '68?
- 17 A. I would have to say yes, to the best of my recollection.
- 18 Q. Do you recall what other information was on the slips
19 of paper besides, - well, tell me what was on the slips
20 of paper, if you would?
- 21 A. The month, the year and the dollar amount.
- 22 Q. Was it broken down any further?
- 23 A. No. That was all that was on the slip of paper.
- 24 Q. Did Dr. Booth give you any copies of his office receipts?
- 25 A. No.

1 Q. Or did he, - I am sorry.

2 A. He only gave me what I asked him for, sir. These I
3 wanted the nature of the moneys from his office calls
4 on a slip of paper and this is what he gave me. He
5 gave me what I asked him for.

6 Q. And what did you do with that information after you
7 received it?

8 A. This again was maintained in a summary listing that I
9 myself had developed showing what the amount of money
10 was from that particular source and it was added to the
11 other sources of income to prepare the total income
12 for the year.

13 Q. Mr. Lonardo, would you look, please, at Government
14 Exhibit 44 for identification and tell me if you can
15 identify that exhibit?

16 A. That is my handwriting, I am sure of that, and the,
17 what I see here --

18 Q. I am sorry. You say that is your handwriting?

19 A. It appears to be my handwriting, although it is in
20 duplicate form, I am pretty sure that it is my income.
21 I have to say that it is and it is the 1967 office
22 receipts listing for Dr. Booth by month with a notation
23 on the bottom.--

24 Q. Well, before we get into that, - well, a note on the
25 bottom. Is it an explanatory note of some kind?

- 1 A. It is a reference note for me to observe, no doubt,
2 when I would look back to it again. When I evidently
3 got this figure, something stood out that I had to
4 question or ask a question about.
- 5 Q. Did you prepare this, Mr. Lonardo, this exhibit on the
6 basis of information received from Dr. Booth?
- 7 A. Yes. These figures came from the slips of paper I
8 mentioned to you earlier.
- 9 Q. And is this the ordinary manner in which you would
10 prepare the record at the end of the year?
- 11 A. This was one part of the worksheet form and I had
12 another worksheet form that I had developed myself as
13 a listing of all the various sources of income.
- 14 Q. Was it the ordinary course of your practice here when
15 you prepared the returns to make a schedule of this
16 kind?
- 17 A. Yes, I would list each one separately first and then
18 compile this.
- 19 Q. And did you prepare this in the course of your prepara-
20 tion of Dr. Booth's return?
- 21 A. Yes, after the end of the year, the close of the year,
22 the close of business.
- 23 Q. Now, would you look, please, Mr. Lonardo, at Government
24 Exhibit 43. Can you identify that exhibit?
- 25 A. Yes, this looks like again a duplicate copy in my

1 handwriting. It looks like my handwriting, 1967,
2 business income listing showing the breakdown by the
3 various categories or, say, sources of income for
4 Dr. Booth and it includes, - excuse me.

5 Q. I'm sorry, go ahead.

6 A. It includes dividends, interest income, capital gain
7 transactions, other dividends. Some were capital gains,
8 some were not.

9 Q. Did you prepare this schedule, Mr. Lonardo, from
10 information provided to you by Dr. Booth?

11 A. Yes, the 1099's and the information of Dr. Booth,
12 exactly right.

13 Q. Was this also prepared in the ordinary course of your
14 work for Dr. Booth as a tax preparer?

15 A. Yes.

16 Q. And was this your ordinary practice to make an exhibit
17 of this kind every year?

18 A. Yes. I would always make a worksheet backup for as
19 much as I possibly could.

20 Q. And would you also look, Mr. Lonardo, at Government
21 Exhibit 45 and tell me if you can identify that
22 exhibit?

23 A. I can. This appears to be in my own handwriting and
24 it is actually 1968. I think that is what that number
25 is. This again lists the various sources of income

1 for Dr. Booth for the year '68 and it summarizes them
2 and then it is totaled at the bottom of the page.

3 Q. And now, please, would you look at Government Exhibit
4 46 and identify that, if you can?

5 A. 1968 listing of office receipts for the months, or
6 rather, by month for the year '68.

7 Q. Was this another schedule prepared by you?

8 A. That's right.

9 Q. Is this the same --

10 A. As we had earlier.

11 Q. As we had earlier for the calendar year '67?

12 A. '67, right.

13 Q. All right. Now, would you look at Government Exhibit 47,
14 please, and tell me what that is?

15 A. Yes. This is a listing that I myself developed, the
16 intent of which is to serve as a guideline showing the
17 various sources of income. It was also intended to
18 serve as a basis, if you will, for the, - to help me to
19 determine, - that was a way for income averaging. The
20 reason for seeing these figures is because the income
21 was increasing every year and we wanted to make sure
22 we took advantage of income averaging so that we could
23 get the most beneficial tax result.

24 Q. Mr. Lonardo, were these latter few exhibits, 45, 46 and
25 47 also prepared in the ordinary course of your work as

1 a tax preparer?

2 A. Yes, they were.

3 Q. And was it your ordinary course of practice to prepare
4 these forms in this manner periodically?

5 A. I would do this every year at the end of each year.
6 This is my own system or my own developing idea.

7
8 MR. BURNS: Your Honor, I offer in evidence
9 Government Exhibits 43 through 47.

10 MR. FEIN: Your Honor, I have two schedules
11 which may be the originals of two of
12 these exhibits and if so, I would prefer
13 that the originals be admitted into
14 evidence.

15 THE COURT: Mr. Burns.

16 MR. BURNS: I would be glad to substitute them.
17 I haven't seen the originals, though.

18 MR. FEIN: If they are, that is your 46 and
19 then 47.

20 THE COURT: Could we go ahead and have examina-
21 tion and take care of that later.

22 MR. FEIN: I have no objection.

23 THE COURT: Mark all the exhibits in evidence
24 and then if possible substitute the
25 originals later.

(Government Exhibits Numbered 43,
44, 45, 46, 47 received in evidence.)

THE COURT: Any questions, Mr. Pein?

MR. BURNS: Oh, I have a lot of questions.

THE COURT: You have some more questions?

MR. BURNS: Yes, on the basis of the exhibits.

THE COURT: All right, fine.

BY MR. BURNS:

Q. Mr. Leonardo, would you look at Government Exhibit 44 again, please, which you identified as the schedule of office receipts for 1967. Would you tell me what the amounts are, the monthly amounts of the office receipts are on this schedule?

A. Yes. In January, one hundred twelve; February, one hundred eighteen; March, one hundred twenty-two; April, one hundred five; May, one hundred ten; June, one hundred six; July, - that appears to be ninety-nine; August, one hundred two; September, one hundred; October, one hundred two; November, one ten; and December, one hundred six. That ninety-nine would have to be checked by your arithmetical total down at the bottom, I guess.

Q. What is the total on the bottom?

A. One two nine two, \$1,292.

- 1 Q. Do you have any reason to question that figure, Mr.
2 Lonardo?
- 3 A. Yes, I questioned it and this is why I made the notation
4 on the bottom of the page.
- 5 Q. When you questioned it, what did you do?
- 6 A. I asked the doctor. Rather, I pointed out to the
7 doctor that the moneys for his office calls appeared
8 to be low compared to what we had been having and I
9 learned that during the years of '67, '68, more and
10 more people were becoming qualified for Medicaid,
11 Medicare receipts and in order to get a proper picture
12 of this type of money which was being received from
13 those patients, we have to consider relating Social
14 Services income along with the office calls moneys.
- 15 Q. What do you mean by relating, relating to welfare
16 payments?
- 17 A. Well, they should be taken together. In other words,
18 you compare Social Services plus office calls of one
19 year to Social Services plus office calls of the
20 previous year or for future years.
- 21 Q. Now, Mr. Lonardo, when you questioned this figure and
22 discussed it with Dr. Booth, did he make any mention
23 of office, - of checks that he had received during the
24 course of the year as payment for his services?
- 25 A. He made no mention of it because I asked him --

1 Q. Did he make any mention of it?

2 A. He did not make any mention of it to me, no.

3 Q. Would you look at Government Exhibit 46 which you have
4 identified as the --

5 A. '68.

6 Q. As the schedule of --

7 A. Comparable.

8 Q. Of office receipts for 1968?

9 A. Yes.

10 Q. Would you read off the amounts of these office receipts?

11 A. Yes. January, one hundred ten; February, one fifteen;
12 March, one O five; April, one O five; May, one thirty;
13 June, one twenty; July, one thirty; August, one hundred;
14 September, one twenty; October, one O seven; November,
15 one twenty-five and December, ninety-five, for a total
16 of \$1,362.

17 Q. Did you have any conversation with Dr. Booth after
18 receiving those monthly figures from him for calendar
19 year '68?

20 A. No, I did not have any conversation with him on this
21 one, but I did relate again with the Social Services
22 income.

23 Q. Mr. Lonardo, do Government Exhibits 46 and 44 represent
24 the total amount of office receipts that were provided
25 to you, the figures for the total amounts which were

- 1 provided to you by Dr. Booth?
- 2 A. These are what I asked for and these are what was given
3 to me.
- 4 Q. Now, would you look at Government Exhibit 45, please,
5 which you have previously identified as a schedule.
6 What kind of a schedule is this?
- 7 A. This is a listing, if you will. It is a backup listing,
8 1958 income by various sources or from various sources
9 for Dr. Booth and all it is is a backup worksheet.
- 10 Q. Does that include, - does that Exhibit 45 include the
11 figure for office receipts as you have previously
12 included in --
- 13 A. \$1,362 appears on this backup sheet like it does on the
14 other one. That is exactly right.
- 15 Q. Mr. Leonardo, after you prepared these schedules each
16 year, what did you do with them?
- 17 A. From these worksheets I prepared the income tax return.
- 18 Q. Did you do any other work for Dr. Booth during these
19 years besides maintaining those books that you referred
20 to earlier?
- 21 A. Yes, I did. I made out the required quarterly 941 Federal
22 Tax Deposit Form. I made out the 501's, the Federal
23 depository slips, the New York State withholding tax
24 depository slips and also the New York State returns.
- 25 Q. Were you compensated for your services by Dr. Booth?

- 1 A. No, not compensated because I didn't charge him for it.
2 I did this gratuitously. I wanted to help the doctor
3 out. I know he was in pretty rough shape.
- 4 Q. Are you referring to all the work you performed for
5 him?
- 6 A. I have never charged him one bit for my work at all.
- 7 Q. Now, did you prepare Federal Income Tax returns for
8 the doctor for 1966, 1967 and 1968?
- 9 A. Yes, I did.
- 10 Q. Did you prepare any returns for him after that?
- 11 A. Not to the best of my knowledge.
- 12 Q. Did you continue to do any other work for him after
13 that date?
- 14 A. Yes, I am still doing his bookkeeping work and his
15 quarterly reports, unemployment insurance and, as I
16 say, the 941 and other forms, yes.
- 17 Q. Have you received any compensation from Dr. Booth for
18 these services?
- 19 A. For these subsequent years the only compensation I have
20 received now is starting in 1974.
- 21 Q. And are you a patient of Dr. Booth?
- 22 A. Yes, I am.
- 23 Q. Have you been a patient from the first date you
24 mentioned earlier in your testimony?
- 25 A. Yes, in the early '60's.

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1 Q. To the present?

2 A. Yes.

3 Q. Do you have family members who are also patients?

4 A. Yes.

5 Q. And has Dr. Booth billed you or charged you for any
6 medical services he has rendered?

7 A. Not one cent.

8

9 MR. BURNS: Your Honor, I have some tax returns
10 I would like to show this witness that
11 have not been marked simply because our
12 witness has not been here to identify
13 them.

14 THE COURT: Go ahead. We will get that
15 connected later.

16 MR. FEIN: I have no objection, your Honor.

17 BY MR. BURNS:

18 Q. Let me show you, Mr. Leonardo, what has been marked now, -
19 what has not been marked but what is the 1040, U. S.
20 Individual --

21

22 THE COURT: You are going to mark that as an
23 exhibit?

24 MR. BURNS: Well, your Honor, we are going to
25 mark the copy as an exhibit rather than

1 the originals.

2 THE COURT:

Let us mark that to coincide. It
3 will have the same number as the copy.
4 The original will have the same number
5 as the copy. Simply after we have other
6 testimony substitute the copies.
7

8 BY MR. BURNS:

9 Q. Mr. Lonardo, let me show you what has been marked as
10 Government Exhibit 1. Can you identify that for me, for
11 the ladies and gentlemen of the jury, rather?

12 A. 1966 U. S. Individual Income Tax return made out for
13 Clayburn C. and Grete G. Booth.

14 Q. Do you know how this income tax return was prepared?

15 A. I prepared it.

16 Q. So I take it you know how it was prepared?

17 A. Yes.

18 Q. All right. How was it prepared?

19 A. From the backup sheets that we mentioned here earlier,
20 the information was put in the proper schedule form.
21 For example, you have here capital gains transactions
22 were listed on Schedule B; business activities on
23 Schedule C, et cetera.

24 Q. What did you do with the exhibit after it was typed up?

25 Let me back up just a minute. Did you type the return?

- 1 A. No, I did not.
- 2 Q. Do you know who did?
- 3 A. I had it typed. I don't recall who it was.
- 4 Q. After the return was typed up, what did you do with
- 5 it?
- 6 A. I made sure that it was brought to Dr. Booth and his
- 7 wife and point out to them what their tax obligations
- 8 were.
- 9 Q. How did you do that?
- 10 A. By physically taking this return with me, delivering it
- 11 to his home and his office which is in the same
- 12 building, of course, and making sure that I would have
- 13 the return with me to explain to him what he had to do
- 14 to get this in on time.
- 15 Q. And did you review the return with him in any manner?
- 16 A. Page 1 was the only so-called review, if you will.
- 17 Page 1 showed what his obligation was to pay in addition
- 18 to what he had already paid by virtue of estimates, or
- 19 if he had an overpayment showing a credit against his
- 20 1040ES Form which incidentally is not attached here.
- 21 The 1040ES is the estimate form which I made out at the
- 22 same time as this, so they could show the obligation
- 23 for the past calendar year and the coming calendar year.
- 24 Q. Did Dr. Booth ask any questions when you reviewed this
- 25 return with him?

- 1 A. The only question he asked is, "what is it I have to
2 pay and what do I have to pay for my quarterly payments".
3 Q. And then did he sign the return?
4 A. He did not sign it in front of me, no.
5 Q. Now, let me show you what has been marked Government
6 Exhibit 2. Can you identify this exhibit?
7 A. 1967 1040 U. S. Individual Income Tax return for
8 Clayburn C. and Grete G. Booth.
9 Q. And do you know how this was prepared?
10 A. I prepared it and I prepared it again from the summary
11 or backup sheets we were talking about here a few
12 minutes ago, putting those numbers on these sheets.
13 Q. Was it prepared in the same manner as Government Exhibit
14 1, the '66 return?
15 A. Yes, in the same manner.
16 Q. All right. What did you do with Exhibit 2, the '67
17 return, after you had prepared it, typed it up?
18 A. Much the same. In fact, exactly the same as I did with
19 Number 1, making sure I took it to the office and the
20 home and go over it with the doctor to the extent of
21 what was due, how much was overpayment and what would
22 he have to pay for his quarterly payments for the
23 coming year.
24 Q. And did the doctor then sign it?
25 A. No, he did not.

- 1 Q. And what did you do at that point?
- 2 A. I left it with him, making sure that they would observe
3 signing it and posting it by the 15th of April.
- 4 Q. All right, and now, finally, showing you Government
5 Exhibit 3, would you identify that exhibit?
- 6 A. The 1968 1040 U. S. Individual Income Tax return made
7 out for Clayburn C. and Grete C. Booth which I prepared,
8 and this again was prepared in much the same manner as
9 '67 and '66.
- 10 Q. And did you again follow the same procedure in discussing
11 it with Dr. Booth?
- 12 A. Yes.
- 13 Q. Was there any difference in the procedure for the '68
14 return, any difference from the '66 and '67 returns?
- 15 A. Not to the best of my recollection.
- 16 Q. Mr. Leonardo, I notice on Government Exhibit 3, '68
17 return, there is a block at the bottom of the return
18 which says "Signature of preparer other than taxpayer",
19 together with a date and address. Did you sign this
20 tax return?
- 21 A. No, I did not.
- 22 Q. Is there any signature at this point where it says
23 "Signature of preparer"?
- 24 A. There is no signature.
- 25 Q. And would you look at Exhibit 2 where it also calls for

1 signature of preparer. Did you sign that one?

2 A. No, I did not.

3 Q. And Exhibit 1 where it also asks for signature of
4 preparer, did you sign that?

5 A. No, I did not.

6 Q. What reason, - do you have any reason for not signing
7 these tax returns?

8 A. In my own humble opinion, I felt it was not necessary
9 to sign it.

10 Q. And for what reasons did you believe it was not necessary
11 to sign it?

12 A. Just my opinion. I have no reason.

13
14 MR. BURNS: I have no further questions.

15 THE COURT: Mr. Fein.

16
17 CROSS EXAMINATION BY MR. FEIN:

18 Q. I show you Defendant's Exhibit Number 19 for identifica-
19 tion --

20
21 (Defendant's Exhibit Number 19
22 marked for identification.)

23
24 BY MR. FEIN:

25 Q. And ask you to examine it, please.

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1 A. Yes.

2 Q. What is the heading on this?

3 A. This is called "The Dome Simplified Weekly Bookkeeping
4 Record", as I mentioned here earlier.

5 Q. Is this the record that you were talking with Mr. Burns
6 about?

7 A. Yes, it is. It is exactly the one.

8 Q. And what did you call it?

9 A. "Simplified Weekly Bookkeeping Record".

10 Q. Okay. Now, what did you, - what was the procedure that
11 you followed in maintaining these records?

12 A. Every month I would pick up the doctor's checkbook that
13 had the invoices and bills along with it. I would
14 record by date, by account or by the type of item the
15 check covered, the check number and the actual amount
16 of dollars involved. Each transaction was recorded on
17 a separate line in this book.

18 Q. And then subsequently what would happen later in the
19 year?

20 A. Subsequent to the posting of all this information from
21 the checkbook I broke these entries or transactions
22 down into my developed form of accounts, if you will,
23 indicating the breakdown, for example, medical supplies,
24 repair, maintenance, uniforms, laundry services of
25 some kind.

1 Q Did Doctor, - did the doctor have anything to do with
2 your maintaining this book?
3 A This is my own personal development of the book and the
4 system. This is the way I prepared it. The doctor
5 did not have anything to do with it. I prepared it
6 myself.
7 Q Well, isn't it true that everything that was done by
8 the doctor was pursuant to what you had asked him to do?
9 A Yes. He gave me everything I asked him for, everything.
10 Q Everything you asked him for?
11 A Everything I asked him for I received, no ifs, ands or
12 buts about it.
13 Q Now, much ado is being made about the office receipts.
14 What did you, - when you understood, - how did this, -
15 how was this initiated, this office receipts, the
16 terminology? Did you originally say office receipts,
17 did you say office calls, did you say cash and office
18 calls, what did you say?

19
20 THE COURT: Mr. Fein, can't you make a simple
21 question?

22 MR. FEIN: I am sorry.

23 THE COURT: There are about four questions
24 there. State it simply, please.
25

1 BY MR. FEIN:

2 Q. Do you recall the, - what you said to him and what he
3 said to you when you first initiated this program?

4 A. Yes. I called it, "I would like to have from you,
5 doctor, a number indicating the cash office calls and
6 visits you have actually received during the course of
7 the year by month. I need this breakdown by month
8 because it will serve me as a direct comparison here
9 to know what kind of activities you are having as office
10 calls and visits."

11 Q. You asked him for the cash office calls?

12 A. This is what he gave me. He gave me everything I
13 asked for.

14 Q. Did he ever fail to give you anything that you asked
15 for?

16 A. No, never.

17 Q. Okay. Now, with reference to Government's, - have these
18 been admitted into evidence?

19
20 MR. BURNS: Yes.

21

22 BY MR. FEIN:

23 Q. Government's Exhibit Number 44 admitted into evidence
24 which is the total of cash office calls, is that?

25 A. The breakdown by month, January, February, et cetera.

- 1 Q. And the total --
- 2 A. Is one thousand two ninety-two.
- 3 Q. Now, is there a line for that?
- 4 A. Check this page, sir, if you will. Yes, it is, one
- 5 thousand two ninety-two. Here it is.
- 6 Q. That is now reflected in --
- 7 A. Yes.
- 8 Q. In Exhibit 43?
- 9 A. Right, Exhibit 43.
- 10 Q. Okay. Now, what is the first item on Exhibit 43?
- 11 A. Social Services.
- 12 Q. And what is that amount?
- 13 A. \$32,324.35.
- 14 Q. Do you recall how you got that information?
- 15 A. This came from a 1099.
- 16 Q. Well, will this help refresh our memory?
- 17 A. I would have to say 1099. I see here, all right. I
- 18 beg your pardon. I just kept thinking 1099 at the time.
- 19 Q. What is this?
- 20 A. This is a statement --
- 21
- 22 MR. FEIN: May I, your Honor, take a sticker
- 23 so I get it --
- 24 THE COURT: Just mark it in pencil for the
- 25 present, Mr. Fein.

1 BY MR. REIN:

2 Q. This would be 20. This is Government Exhibit 20, -
3 Defendant's Exhibit 20 for identification, and I ask you
4 to examine that and then please read it to the ladies
5 and gentlemen of this jury.

6 A. It is a statement made out by a Mrs. Alice May Mallaber,
7 accounting supervisor for the Niagara County Department
8 of Social Services. It is addressed to Dr. Booth and
9 it is dated March 27, 1968. It says, "Dear Dr. Booth,
10 The amount paid to you by the Social Services Department
11 for 1967 was \$32,324.35." and that is my checkmark.

12 Q. That is your checkmark?

13 A. Yes.

14 Q. And then what did you do, transpose --

15 A. Transferred this.

16 Q. Transferred this to --

17 A. To the backup sheet, Line 1.

18 Q. I show you the stipulation entered into between the
19 Government and Dr. Booth with reference to a stipulation
20 involving the Niagara County Department of Social
21 Services and I refer you to the second page, - well, I
22 guess maybe you will have to read this stipulation and
23 then just pick the '67 figure out, if you will. 8

24 A. All right, sir, I will. "It is hereby stipulated and
25 agreed by and between the United States of America and

1 the defendant Clayburn C. Booth that if Mary Alice
2 Mallaber, Accounting Supervisor, Niagara County
3 Department of Social Services, 100 Davison Road,
4 Lockport, New York 14094 were to testify in the case of
5 United States v. Clayburn C. Booth -- "

6
7 THE COURT: Excuse me. We have already had
8 that.

9 MR. FEIN: May I just refer to the amount
10 then, your Honor?

11 THE COURT: Yes.

12 THE WITNESS: Just the amount, sir. All right,
13 sir. I am sorry. On Page 2 the amount,
14 1967 reads "\$32,324.35".

15
16 BY MR. FEIN:

17 Q. And is that the same amount you listed as business
18 income, is that right?

19 A. Right, exactly the same.

20 Q. I show you Defendant's Exhibit 21 marked for identifica-
21 tion and refer to the last item on that sheet, ask you
22 to read it to the jury, please.

23 A. This is an information return for calendar year 1967
24 made out to C. C. Booth, M.D., 532 Memorial Parkway,
25 Niagara Falls, New York and it says, "Patronage dividends

1 and certain other distributions by cooperatives \$1,833.08
2 from Blue Shield of Western New York".

3 Q. And Medicare, is that what that represents?

4 A. Right. Blue Shield dash Medicare, \$1,833.

5 Q. There is a difference of eight cents?

6 A. Eight cents, right. A difference of eight-cents,
7 exactly right.

8 Q. The third one?

9 A. The third one I have listed on here --

10 Q. I show you Exhibit 21 again.

11 A. Exhibit 21, this is an information return for 1967
12 made out to the doctor from the City of Niagara Falls,
13 Niagara Falls, New York in the amount of \$109.25 listed
14 as compensation.

15 Q. Again is that on your schedule?

16 A. City of Niagara Falls --

17
18 MR. BURNS: Your Honor, I am going to object
19 simply because the exhibits are apparently
20 misnumbered, at least according to our
21 records. We have two exhibits 21.

22 MR. FEIN: No, this --

23 THE COURT: Just a minute, Mr. Burns. Let us
24 get it straightened out. Whatever you
25 say there is on the record. Step back

there and work it out.

BY MR. FEIN:

Q. I will go back to Defendant's Exhibit 21 for identification and ask you what is, - are there more than one photostat of a 1099 on that sheet, and if so, will you just read the name of the payer for each one of the three?

A. Yes. There are three of them on this sheet of paper. The first one is from the State Insurance Fund in New York, New York, to the amount of \$948.35.

Q. You don't have to read. I would just like you to read the names.

A. All right. The first one is State Insurance Fund. The second one is City of Niagara Falls, Niagara Falls, New York, and Blue Shield of Western New York, Buffalo, New York.

Q. And this is, - and Defendant's Exhibit 22 for identification, and will you make reference to what is on that sheet, please?

A. Blue Shield of Western New York, Buffalo, New York.

Q. There is a photostat copy of a 1099, is that right?

A. Right, just the one.

Q. All right, and Defendant's Exhibit 23, please?

A. There are three on this sheet of paper, John Hancock

- 1 Mutual Life Insurance, Marine Midland Trust of Western
2 New York and Falls Budget Corporation.
- 3 Q. And Defendant's Exhibit 24, please?
- 4 A. There are three also on this sheet of paper. The first
5 one is Nuclear Materials and Equipment Corporation at
6 Lewiston, New York. The next one is the Bank of New
7 York Dividend Disbursing Agent in New York and the Bank
8 of New York again, disbursing agent in New York City.
- 9 Q. Now, the first one is not a 1099, the first --
- 10 A. A W-2.
- 11 Q. That is a W-2, is that right?
- 12 A. Exactly right.
- 13 Q. Okay. Now, referring back again to Exhibit 21, you
14 read to the Court the first item which represented
15 eighteen thirty-three O eight.
- 16 A. Yes.
- 17 Q. And then one O nine twenty-five?
- 18 A. Right.
- 19 Q. Now, the third item is what?
- 20 A. The State Insurance Fund, amount of fees paid \$948.35.
- 21 Q. And again is that shown on your sheet?
- 22 A. Yes, it is.
- 23 Q. That is on Line 4?
- 24 A. Line 4, State Insurance Fund, \$948.35.
- 25 Q. Now, referring to Defendant's Exhibit 22 for identifica-

- 1 tion, will you read what that one is?
- 2 A. \$21,583.58. This is Blue Shield of Western New York.
- 3 Q. And again is that on your sheet?
- 4 A. Yes, Line 5, twenty-one thousand five hundred eighty-
- 5 three fifty-eight.
- 6 Q. And did you make a subtotal of those?
- 7 A. Yes, I did, subgross total.
- 8 Q. And what was that subgross?
- 9 A. \$56,798.53.
- 10 Q. And then to which you added --
- 11 A. Plus the office income of one thousand two hundred
- 12 and ninety-two, making a gross total of \$58,090.53.
- 13 Q. That "office" is the cash?
- 14 A. Office income is the cash office calls and visits.
- 15 Q. Now, all of those items are reflected in Government's
- 16 Exhibit 43, is that right?
- 17 A. Yes.
- 18 Q. All right. I show you Government's Exhibit 2 which will
- 19 be admitted in evidence which is identified for the
- 20 time being and referring to Schedule C. Will you tell
- 21 the ladies and gentlemen of the jury what Schedule C
- 22 is?
- 23 A. Schedule C is the profit or loss from business or
- 24 profession schedule and the very first line, or Line
- 25 Number 1 says "Gross Receipts or Gross Sales". The

1 figure therein is 990.53.

2 Q. Which is the amo that you had made up on your work-
3 sheet, is that right?

4 A. Exactly, \$58,090.53.

5 Q. Okay. Now, referring to Defendant's Exhibit 23 for
6 identification, would you read from the top down and
7 then after you have done that, will you refer to your
8 schedule, please?

9 A. Yes, I will. On this sheet of paper the very first one
10 is from John Hancock Mutual Life Insurance to the tune
11 of \$10.10. Marine Midland is Number 2 to the tune of
12 \$456.88. Number 3 is Falls Budget Corporation to the
13 tune of \$280. These all represent interest income and
14 they are on information returns.

15 Q. Are they on your sheet?

16 A. Falls Budget Corporation, \$280; Marine Midland, \$456.88;
17 John Hancock Mutual Insurance Company, \$10.10, for a
18 total of \$746.98.

19 Q. And is that what is reflected on this tax return as an
20 interest income item?

21 A. Interest income on the return shows \$746.98.

22 Q. I refer to Government's, - to Defendant's Exhibit 24
23 for identification and ask you to read from the top
24 down again and refer to your worksheet, please.

25 A. Yes, sir.

- 1 Q. To Exhibit 43.
- 2 A. The first one is a W-2 Form from Nuclear Materials and
3 Equipment Corporation located at Iewiston, New York,
4 and that shows the amount of \$2,205.98 paid as wages
5 to Dr. Booth and in this sheet, Exhibit 43, there is
6 a line that shows wages, \$2,205.98. Item Number 2,
7 the Bank of New York, dividend disbursing agent shows
8 a dividend and other distributions, total \$44.94,
9 broken down as follows, \$9.25 as qualifying dividends;
10 \$33.34 as capital gains and \$2.35 as nontaxable dividends.
11 On my sheet of paper here --
- 12 Q. Exhibit 43, Government's Exhibit 43.
- 13 A. Exhibit 43 I have here dividends \$44.94, total, and
14 \$1.96 is from, - well. I should have read Item Number 3.
15 Item Number 3 on Exhibit 24 is also a dividend return
16 figure of \$1.96, all of which is rendered nontaxable,
17 so in Exhibit 43 now I show dividends total of \$44.94
18 plus \$1.96, for a total of \$46.90, and we have excluded
19 from that \$33.34 which is capital gains, \$4.31 which
20 is nontaxable and \$200 which at the time was a dividend
21 exclusion, so if the subtraction is \$237.65 subtracted
22 from \$46.96, there is no dividend remaining.
- 23 Q. And you showed it that way in Government's Exhibit 2,
24 is that true?
- 25 A. Let me look at that, please, if you will. Yes, this

1 return shows the same numbers as I read them, namely
2 \$46.90 less the \$200 exclusion, less the capital gain
3 \$34.34, less nontaxable distribution of \$4.31, which
4 shows a remaining balance of zero or a negative figure.

5 Q. Now, every 1099 that was received, - that you know of
6 that was received by the doctor has been reflected in
7 these accounts and subsequently reported in the doctor's
8 income tax return.

9 A. In the 1040, yes, in the proper schedules.

10 Q. And isn't that what you asked him to do specifically?

11 A. Yes, it is.

12 Q. To report to you the items of income that he received
13 on his 1099's?

14 A. And W-2's.

15 Q. And his W-2's.

16 A. Yes, exactly the same.

17
18 MR. FEIN: Your Honor, may I suggest that we
19 call a halt now and I will combine these
20 instead of putting them all in separately.
21 They are the 1099's.

22 THE COURT: Mr. Fein, here there aren't many
23 secrets. I had put the burden on the
24 Government to mark all the exhibits
25 that they are going to use. Usually in

1 these cases we do not have many exhibits,
2 not that you aren't entitled to have
3 exhibits, but if you are going to have
4 anymore exhibits which have not been
5 marked, I would appreciate it very much
6 if you would meet with Mr. White and
7 Mr. Knisley and mark them ahead of
8 time.

9 MR. FEIN:

Yes.

10 THE COURT:

Because the procedure of marking
11 them piecemeal is most confusing. There
12 is no reason why these materials, and
13 if there is any reason why you do not
14 want to show them to the Government
15 ahead of time you do not have to, but
16 for the sake of orderly procedure, any
17 additional exhibits that you are going
18 to mark, mark them now. If you do not
19 have them, then bring them tomorrow
20 morning or at the noon break and mark
21 them then. Meet with Mr. White and
22 Mr. Knisley. I would like to continue
23 further but you say that you have a
24 number of things to mark there.

25 MR. FEIN:

I will continue on for a while.

1 THE COURT: You have the book there?
2 MR. FEIN: Another book.
3 THE COURT: Is that marked, Mr. Fein?
4 MR. FEIN: No. I will mark it with the next
5 number, your Honor.
6

7 BY MR. FEIN:

8 Q. I refer you to Defendant's Exhibit 25, - 25 marked for
9 identification, and ask you to examine this, please.

10 A. I recognize this as the Dore publication Simplified
11 Weekly Bookkeeping Record for the year 1968 for Dr.
12 Clayburn C. Booth which I maintained, and I made the
13 entries from his checkbook and invoices and bills.

14 Q. Again you followed the same procedure in '68; you
15 went to Doctor's office, took his check stubs and then
16 made the entries, is that right?

17 A. Yes, it is.

18 Q. I refer you to Government's Exhibit 45 in evidence
19 which is, - is this called income for '68?

20 A. It is a listing of the sources of income for 1968.

21 Q. I will mark this Defendant's Exhibit 26 for identifica-
22 tion, and ask you to examine it and will you without
23 reading each individual slip at this time, will you just
24 tell the ladies and gentlemen of the jury what this, -
25 what these are?

- 1 A. The first one is a W-2 Form from Nuclear Materials and
2 Equipment Corporation, Lewiston, New York.
- 3 Q. For 1968?
- 4 A. For 1968, made out to Dr. Clayburn C. Booth and the
5 amount \$2,399.80.
- 6 Q. Don't read the amounts.
- 7 A. I am sorry. Next one is a Form 1099 as compensation
8 from City of Niagara Falls, New York. The next one is
9 a Form 1099 for the year 1968 from Blue Shield of
10 Western New York, two of them, and then there is another
11 one now, a 1099 from Marine Midland Trust of Western
12 New York. There is another one from Marine Midland
13 Trust of Western New York. It is a 1099 from John
14 Hancock Mutual Life Insurance. There is a dividend
15 distribution 1099 from IPC Plan, National Investors
16 Corporation, Bank of New York. Here is another one,
17 information return for 1968 from Merrill Lynch, Pierce,
18 Fenner & Smith, and here is another one from the Bank
19 of New York, another 1099 from the Bank of New York.
- 20 Q. Okay. Now, the first item on this Government's Exhibit
21 45 --
- 22 A. Yes.
- 23 Q. Is an item called, - wait, you have three different
24 columns for this, - on this sheet, is that right?
- 25 A. Yes.

1 Q. One, the first column, the one closest to the jury is
2 called "Wages".

3 A. "Wages".

4 Q. The other is called "Other"?

5 A. "Other".

6 Q. And the other, the third?

7 A. "Business".

8 Q. Okay. The first item is --

9 A. Wages, Nuclear Materials is listed on Exhibit 45 and
10 the W-2 for Nuclear Materials Corporation to the tune
11 of two thousand three hundred ninety-nine eighty, and
12 that is exactly the same figure that is on the Exhibit
13 45. Blue Shield of Western New York, 1099, \$19,087.25,
14 Item 2 on Exhibit 45, \$19,087.25.

15 Q. And that is carried out into the business --

16 A. Right, business column. This is from City of Niagara
17 Falls, 1099, compensation for \$48 listed under business
18 column.

19 Q. And is on your list?

20 A. Yes, listed on here, \$48. Here it is.

21

22 THE COURT: All right. Let us do this, Mr.

23 Fein. At this time we will be in

24 recess until 2:00 o'clock. Please go

25 to the jury room a few minutes before

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1 2:00 and we will continue the testimony
2 in this case. You may go out with the
3 marshal, please, and return at 2:00.

4
5 (Defendant's Exhibits Numbered 20,
6 21, 22, 23, 24, 25, 26 marked for
7 identification.)

8
9 THE COURT: We will be in recess.

10
11 (Recess taken at 12:45 p.m.)
12
13
14
15
16

17 * * * * *

1 PROCEEDINGS: February 3, 1976, 2:00 p.m.

2 APPEARANCES: As before noted.

3 (Defendant present.)

4 (Jury present.)

5
6 THE COURT: Is the witness here, Mr. Lonardo?

7
8 DOMINICK L. LONARDO, a witness called by and
9 in behalf of the Government, having been previously duly
10 sworn, resumed the witness stand and testified further as
11 follows:

12
13 CROSS EXAMINATION BY MR. FEIN (Resumed):

14 MR. FEIN: I am just looking for some forms
15 that I had, your Honor.

16 THE COURT: I wonder, could Mr. Burns help.
17 Would Mr. Burns have them?

18 BY MR. FEIN:

19 Q I have them. Mr. Lonardo, I think before we broke for
20 lunch you were looking at Government Exhibit 45 which
21 is your sheet showing the income for the calendar year
22 '68 for the doctor and we were reviewing the 1099's and
23 the W2's which had been received by the doctor and
24 which you had recorded on this sheet, is that right?

25 A That's correct, yes, sir.

1 Q Okay. My recollection is that the last 1099 that I had
2 called to your attention and asked you to compare was
3 this one dealing with the City of Niagara Falls for
4 \$48.

5 A \$48 entry is correct, sir.

6 Q Thank you, and that is in the - -

7 A Business.

8 Q Column called "business", right?

9 A Right.

10 MR. FEIN: Bob, could you give this a number,
11 please.

12
13 (Defendant's Exhibit Number 27
14 marked for identification.)
15

16 BY MR. FEIN:

17 Q Thank you. I show you Defendant's Exhibit 27 for
18 identification and ask you to examine it and will you
19 please tell the jury what is contained therein and
20 exactly what is on that letter?

21 A This is a letter addressed to the Department of
22 Welfare and written by Dr. Booth, Exhibit 27.

23 Q What is the date?

24 A March 13, 1969, and it reads, "Dear Sirs: Would you
25 please send us a statement of services paid to me in

1 a period of 1960 for our income tax purposes. Thank
2 you for your consideration in this matter. Yours truly,
3 Clayburn C. Booth, M.D."

4 Q And is this the original letter that was mailed to the
5 Social Services?

6 A This is the original letter.

7 Q And what is noted on the bottom of that letter?

8 A The bottom of this letter is noted the figure 1968
9 and then \$41,750.60.

10 Q And that amount is handwritten?

11 A That amount is handwritten.

12 Q And is there a check alongside of that?

13 A Yes, sir, that is my check mark, sir.

14 Q What is that check mark?

15 A That is to denote that I have picked up that amount,
16 recorded it on this work sheet and made sure it
17 agrees with the amount I have on the 1040.

18 Q Well, if there were no 1099 which apparently there is
19 in this instance, that would still be the source?

20 A Of information I had used to put on my work sheets,
21 the supporting work sheets for my 1040 entry.

22 Q Is that forty-one seven fifty sixty listed on your
23 sheet?

24 A Yes, sir. It is under the line, or rather it is in
25 line with the title "Niagara County Social Services"

1 business column, \$41,750.60 and it agrees with the
2 figure that is on this letter dated March 13, 1969.

3 Q Apparently, I can't locate a 1099, but is there any
4 additional items listed in your column for so-called, -
5 for business expense?

6 A Yes, business income.

7 Q Business income?

8 A Yes, sir, under the column "Business Income", there
9 is an entry of \$446 which is in line with the entry
10 "New York State Insurance Fund", \$446, sir.

11 Q All right, and is there an additional item?

12 A Yes. Under the, - in the business column, there is
13 an additional entry for the office monies, \$1,362.

14 Q And is that the total that is marked in Government
15 Exhibit 46 in evidence?

16 A Just a moment, sir. Exhibit 46 carries a figure
17 one thousand three hundred and sixty-two and it
18 agrees with the entry that is in the business column
19 on this sheet, \$1,362.

20 Q I ask you to look at this sheet which is unidentified
21 at the moment and would you compare that with
22 Government Exhibit 46, please?

23 MR. BURNS:

Would you describe the document
you have handed to him?

24
25

1 BY MR. FEIN:

2 Q It is a white sheet with lines and it appears to be
3 an original, the original of Government Exhibit 46.

4 A Can I have the sheet of paper, sir? Yes, in checking
5 it, Mr. Fein, I see the exact same information from
6 the original copied onto the duplicate, namely, the
7 office monies for the year 1968 for Dr. Clayburn C.
8 Booth and the notation on the bottom has a reference
9 to the 1967 note. Yes, exactly the same.

10 Q And again, I show you a sheet which is headed "comparison
11 of income" and ask you to compare that with the photo-
12 stat which is the Government - -

13 A 45.

14 Q No, it is not 45. Here it is, 47.

15 A 47. The figures on each of these sheets are exactly
16 alike. One is apparently the original and this is a
17 duplicate copy.

18 Q It is a photostat.

19 A Yes, a photostat.

20 Q Okay. I point, - I ask you to examine Government Exhibit
21 45 again which is the income for '68. In the next line
22 that is on your sheet is identified - -

23 A Marine Midland Trust under the "other" column.

24 Q And I hand you form, - this, will you please - -

25 A It is a form 1099 from the Marine Midland Trust Company

1 of Western New York for the year 1968 under the title
2 of "Interest Income" to the tune of \$797.93, which
3 agrees with the entry in the "other" quote column in
4 this sheet.

5 Q And the next item?

6 A This is also a 1099 for the year 1968 for Dr. Clayburn
7 C. Booth in the "Interest" column to the tune of
8 \$15.10 which agrees with the John Hancock Insurance being
9 on this sheet.

10 Q And the next item?

11 A Again, here a 1968 Form 1099 from Marine Midland Trust
12 to the tune of \$280 in the "Interest" definition of
13 the income and this is also in the "other" business
14 income.

15 Q I hand you the three forms 1099 and ask you to add
16 them. I think you may have combined them in the one
17 item.

18 A All right. These are three statements from the Bank
19 of New York spelling out the amount of dividends that
20 were applicable to the year 1968. One was for \$31.55.
21 The other was, it looks like \$9. There is only one
22 number there, \$9, and the other is \$14.61. I think
23 the three together, dividends, \$55.16; thirty-one
24 fifty-five and nine is forty fifty-five and fourteen
25 sixty-one is fifty-five sixteen and that is - -

1 Q That is again on your sheet.

2 A Exhibit 45, yes, sir.

3 Q May I have Government Exhibit Number 2? No, no, 3.

4 I show you Government Exhibit Number 3 which is in
5 evidence and ask you to examine the totals that are
6 on that sheet which is your work sheet and will you
7 tell the Court where and if they appear on Government
8 Exhibit 3 which is the income tax return for the
9 Dr. and Mrs. Booth for the calendar year 1968?

10 A In this Exhibit 45, we have totals under each of the
11 columns named "Wages, Other, Business" reading
12 \$2,399.80 in wages; \$1,118 in "other" income and
13 \$62,693.85 is business income. We go to the 1040 for
14 1968, individual income tax return for the Dr. and his
15 wife and in the schedule C or the profit or loss from
16 business or profession we have the total income of
17 \$62,693.85, which is in full agreement with the total
18 under the so-called business column as I have labeled
19 it. In the other income areas, we have a \$55.16 figure
20 for the dividends which is agreeable with what is on
21 this page. The, - we have a figure that is on here,
22 total interest income on this 1040 is ten ninety-two
23 o six which agrees with this Exhibit 45 and I read to
24 you the total in the "other" column was \$1,118., but the
25 total interest is still ten ninety-two o six and that

1 other "other" column there was also an income figure
2 of \$12.79 that was the net result of the three informa-
3 tion returns I read to you covering the dividends. I
4 gave you the gross dividends figure and I overlooked
5 giving to you the amount that was non-taxable, the
6 amount that was excludable as a capital gain and the
7 amount that should be reported as an income figure
8 which is \$12.79.

9 Q And lastly - -

10 A And lastly, the income has a W2, wages figure on the 1040
11 appears as \$2,399.80 which is in full agreement with
12 the figure that is on Exhibit 45 in the column
13 labeled "wages".

14 Q I show you Government, - Court Exhibit 22 for identifica-
15 tion which contains a series of work sheets and in the
16 right-hand corner, they are marked for the calendar
17 year 1967 and will you please examine these and tell
18 the Court what they represent.

19 A Yes, sir. These are my back-up or supporting sheets
20 which, if you will recall, I made mention that we broke
21 down the entries in the disbursements journal into
22 accounts. These work sheets show the various accounts
23 with each entry in these accounts accounting for the
24 date, the check number and the amount of the disbursement
25 entered in such columns as was determined in the disburse-

- 1 ments journal. They in turn were totaled and these
2 totals represent the total expenditure for the particu-
3 lar account and made up the figures for the return.
4 Q The amounts that are listed in the individual expense
5 accounts contained in Exhibit C22?
6 A Yes.
7 Q Were they the amounts that were posted from Defendant's
8 Exhibit Number 19? Would you examine that, please?
9 A Yes. 19 is the disbursement journal for the year
10 1967. These figures and these work sheets, the ones
11 you just gave me as a part of Exhibit C22 were taken
12 from the disbursements journal and broken down into
13 accounts.
14 Q Those individual items came from this book, is that
15 right?
16 A Yes, sir.
17 Q And this book in turn came from the doctor's check
18 stubs, originally?
19 A Yes, sir.
20 Q Not from the checks, but the check stubs?
21 A Check stubs. This is from the check book and the check
22 subs, exactly right.
23 Q Did you ever see the doctor's bank statements?
24 A No, I did not.
25 Q Did you ever ask for them?

1 A No, I did not.

2 Q I show you Government's Exhibit C23 for identification
3 which bears the name Clayburn C. Booth, the year 1968,
4 and ask you if you will examine that and tell this
5 jury what that represents?

6 A C23 is a set of eight and a half by eleven size sheets
7 of paper that represent the work sheets or back-up
8 sheets by account of business expenditures for the
9 year 1968. The expenditures taken from the disburse-
10 ments journal. They should have a disbursements journal
11 that will back up these figures.

12 Q The figures that are represented in C23 have been
13 posted from Defendant's Exhibit 25.

14 A Let me check 25, sir. 25 is the year 1968 disbursements
15 journal, that is correct.

16 Q I show you Government's Exhibit 3 for identification, -
17 in evidence and refer you to a schedule called
18 "Explanation of Business Deductions". Did you prepare
19 that?

20 A I prepared it, yes.

21 Q Would you look at that, - did the figures on that come
22 from this C23 for identification?

23 A Yes, 1968. They were made up from, - this sheet is
24 marked some a hundred per cent deductible and some
25 fifty per cent deductible, as the case may be.

1 Q Would you take the first sheet and refer the amount
2 that is on this sheet to the amount that is on that
3 sheet?

4 A Right. Let's see if they are in here. The first
5 item on this sheet is labeled "Auto repair and
6 maintenance", the total on this sheet is listed as
7 eight o seven fifty-six. Now, this figure per se
8 does not appear on this sheet because the way I have
9 it summarized on this explanation of business deductions
10 includes auto, gasoline, oil, lubrication, washing and
11 repairs. Now, we have here eight o seven fifty-six.
12 Here is the total, five thirty-five sixty-nine. There
13 is two sheets for auto R&M. One figure is eight o
14 seven fifty-six. The other figure is five thirty-five
15 sixty-nine. Now, five thirty-five sixty nine plus
16 eight o seven fifty-six is thirteen forty-three twenty-
17 five, and let's see what I have in here, thirteen
18 forty-three twenty-five.

19 Q In other words, you combined, - in this instance, you
20 combined two columns, is that right?

21 A Right. That same heading was on two separate sheets
22 of paper so I took the total of the one account,
23 "Auto repair and maintenance", for example, eight o
24 seven fifty-six was on sheet 1. Five thirty-five
25 sixty-nine was on sheet 2. The sum total of these

1 two sheets is represented in the figure thirteen forty-
2 three twenty-five on this explanation of business
3 deductions sheet. Answering service is listed in here
4 as \$541., and answering service, Item 1, 2, 3, 4, 5,
5 \$541.

6 Q If I were to go through all of these, would you, to
7 the best of your recollection, would have posted these
8 items to that sheet?

9 A I would have to say yes to that, Mr. Fein, because
10 you will note that I have each column checked. This
11 was my way of determining that I had picked up the
12 entries on this sheet of paper with the entries on this
13 paper that was submitted on the return.

14 Q And if I were to ask you in connection with Court
15 Exhibit C22 for identification, which are the expenses
16 for '67, - may I have that, please, - will you pick
17 out a sample item?

18 A Sure.

19 Q And refer them back to this, please?

20 A Sure. Here is a figure for drugs, \$3,598.67 is listed
21 on this sheet which is part of Exhibit C22, and we
22 look at this sheet, cost of drugs \$3,598.67. All right.
23 Now we have here medical supplies, \$536.03; cost of
24 medical supplies, \$536.03.

25 Q If I were to ask you to check each separate item to the

1 best of your recollection, is that where these deductions
2 that are listed in the tax return came from?

3 A Yes. These are the supporting or back-up work papers
4 for what is in those sheets.

5 Q Okay. Now, I refer you to Government Exhibit 47 in
6 evidence which is termed "Comparison of income" and
7 ask you to read across Line 2 which is identified as
8 Medicare Part B for '66, '67 and '68.

9 A Medicare Part B, 1966, the amount shown on these, -
10 on this sheet was \$713.80. In 1967 for that same
11 particular item the amount read \$1,833. In 1968, the
12 word "unavailable" is written in this column.

13 Q What does that mean?

14 A Mr. Fein, in 1968 we did not receive, and when I say
15 "we", I am implying both the doctor and I, we had not
16 received an information return from the Blue Shield
17 Corporation Section Medicare Part B. I most vividly
18 recall this particular item because I had to call the
19 Blue Shield office at least twice, maybe a third time,
20 but at least twice for sure and the reason I remember
21 it is because I had to speak to a gentleman who, by
22 coincidence, happened to be named Mr. Shields and it
23 was Blue Shield that I was calling. The first reason
24 he gave for our not having a 1099 was that they were
25 having some trouble with their "computerized program"

1 unquote and they felt that they didn't know when they
2 would be able to get the information available to us
3 so we left it this way, we had a gentlemen's agreement
4 that either of us would call the other in time hopefully
5 so that we would have the 1968 income tax return
6 timely prepared. As it happened, it came around about
7 the week before the due date of the return in 1969,
8 April of 1969, I had not heard from Blue Shield so I
9 called again and the answer at that time was that they
10 didn't have it and then they didn't know when they would
11 have it and I said, "well, look, I will have to make
12 some accounting for this. Mr. Shields, you appreciate
13 I have to have it. If I don't have it, I will have to
14 put some note in our records to show it is unavailable",
15 and this was the way it was left and it never did come
16 in. Now, I had left word with Dr. Booth that should
17 he receive any kind of a letter or a 1099 or any kind
18 of correspondence from Blue Shield indicating what this
19 figure may have been, what it was supposed to be or
20 what they intended to do about it, we were supposed to
21 be made aware of it and take care of it as quickly as
22 possible. By saying that I intended to take care of
23 it, I mean to imply directly that upon receipt of this
24 information, if there were any such information, this
25 amount of money, dollars, whatever they were, were to

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1 have been incorporated in an amended return for 1968
2 and I don't care what month it would have fallen in.
3 I don't care if it was October or December of '69
4 when I would have got it I would have made an amended
5 return but related to the 1968 base of income so we
6 would have the proper reflection of taxable balance
7 to be charged by the rate that was applicable for the
8 taxable amount of money at that time.

9 Q Did Dr. Booth ever know the fact that you hadn't re-
10 ceived the Medicare Part B, a 1099 for that?

11 A He knew it I was calling for it, yes.

12 MR. BURNS: Please, I object to the question
13 did Dr. Booth know. I don't have any
14 problem with Mr. Leonardo testifying to
15 his conversation with Dr. Booth, but as
16 far as what was in his mind - -

17 THE COURT: As far as what was in his mind,
18 we will have to go on what he did and
19 what he said.

20
21 BY MR. FEIN:

22 Q Did you ever tell Dr. Booth that you had not gotten
23 the 1099?

24 A Yes. I told him I had not gotten it and I asked him
25 if he ever would get it in the mail, please let me know

1 immediately so we could take steps to file the amended
2 return as quickly as humanly possible.

3 Q As far as you are aware of, he never got that 1099?

4 A To the best of my knowledge, it was never received.

5 Q Did you ever try to get this information any other way?
6 That is, to determine what this income was?

7 A No, I didn't because I really wouldn't know where to
8 look for it, to tell you the truth. I mean, it has to
9 come from the person or the payer and I did not think
10 of looking anywhere.

11 Q Did you ever entertain the notion of checking doctor's
12 deposits or anything of that nature?

13 A Well, no, not necessarily, sir. I will tell you why.
14 I was using the guideline or the set of criteria that
15 the 1099 were the sources or the information returns
16 were the sources of income and if I were to consider
17 going to some other source of income to determine what
18 this figure may have been, it is quite possible in my
19 own mind that I could have distorted some figures
20 or some income represented on the 1040. I used the
21 same set of criteria for all three years and I saw
22 no reason to deviate from that.

23 Q These are the series of checks which have been introduced
24 into evidence that are marked 16-1 through 16-63, to
25 which a previous witness has testified to the effect

1 that they had not issued a 1099 for these checks and
2 I believe the total that is represented in these
3 checks came to \$4,862. Would your, - the return
4 filed by you for 1968, in effect, be understated by
5 that amount?

6 A It could have been, yes.

7 Q Wouldn't it have been?

8 A Yes, in actual fact, if you are telling me this, yes.

9 Q Assuming that was true?

10 A Yes, it would be understated by that.

11 Q It had to be understated?

12 A Yes, that's right.

13 Q Because you had intended to amend that return if it
14 did come in?

15 A I had intended to include in this total '68 balance
16 that I have here to the tune of the indicated amount
17 that was covered by Medicaid Part B in the amended
18 return. I would have to include it.

19 Q Now, the gross income of '66, '67 and '68 which is shown
20 in Government Exhibit 47 - -

21 A Yes.

22 Q Were transferred to the respective income tax returns
23 which are evidenced by Government Exhibit 1, 2, and 3?

24 A Absolutely correct. Let me check this out.

25 Q All right. Now, you started keeping the books for the

1 doctor when he first started practice?

2 A That's right.

3 Q You had met him prior to his buying his home which was
4 a combination home and office located at 532 Memorial
5 Parkway, is that correct?

6 A That is correct.

7 Q Do you know what that residence cost him?

8 A I have to refer to a, - I could tell you quickly by
9 seeing a depreciation schedule, for example, for that
10 initial year. Business cost of office was listed as
11 of June '64 when he began his practice as \$5,250,
12 being represented fifty per cent of the business, so
13 two times fifty-two fifty would come to \$10,500 as
14 his cost of that particular building. Now, the home
15 cost him ten thousand five.

16 Q The home and office?

17 A Home and office, that's right.

18 Q And you know that he had a mortgage on that home?

19 A Oh, yes. If my memory serves me right, it was
20 in the neighborhood of eight or nine thousand dollars.
21 He had a very small down payment, I remember that.

22 Q And he was making monthly payments?

23 A Yes.

24 Q Of how much?

25 A I don't recall the figures, sir, but I know he was

1 making monthly payments. This I know.

2 Q You don't recall?

3 A The amount per month, no. I think it is in our work
4 sheets, though, or interest on the mortgage.

5 Q I show you a sheet headed "Annual mortgage statement".
6 Now, this is just to refresh your memory.

7 A Yes, sir.

8 Q Would you examine that and see if that would help you
9 recall what the monthly payments were?

10 A This was my own handwriting indicating home and office
11 and the payment would have to be fifty-two fifty-seven
12 plus forty-five forty-three, or \$88 right on the button.

13 Q Now, does that refresh your memory?

14 A Yes, it does. I knew it was under a hundred dollars,
15 but I couldn't remember the exact amount. I couldn't
16 remember.

17 Q Now, will you tell this Court what kind of a neighborhood
18 this was?

19 A It could have been classified, - it was classified at
20 that time in '64 less than desirable, a mixed neighbor-
21 hood and let's see, it wasn't a choice neighborhood,
22 let's put it that way.

23 Q Well, would you describe it any other way?

24 THE COURT: Was it mostly low income families
25 moving there?

1 THE WITNESS: Low income families and - -

2 THE COURT: Is this description going to be
3 any different from the description
4 given by the prior witness?

5 MR. FEIN: No, your Honor.

6 THE COURT: Why not go on then to something else.

7
8 BY MR. FEIN:

9 Q All right, your Honor. Do you know of any attempts
10 of mugging of the doctor?

11 A Yes, I do, specifically one evening while he was - -

12 MR. BURNS: Your Honor, I object only because
13 it seems to extraneous to this case.

14 THE COURT: I sustain the objection. It
15 certainly has nothing to do, - not to
16 say that it should not happen or it was
17 not a bad event, but it would certainly
18 have nothing to do with this tax case
19 as far as I can see.
20

21 BY MR. FEIN:

22 Q All right. Do you know of any charitable activities
23 that the doctor engaged in?

24 A Yes. He was designated as chairman of the United Givers
25 Fund one year, the Professional Division. He did such

1 an outstanding job in that particular capacity and - -

2 MR. BURNS: I object, your Honor, to these
3 characterizations. Let's stick to the
4 facts.

5 THE COURT: I will sustain the objection.

6
7 BY MR. FEIN:

8 Q Did he win any award because of that service?

9 THE COURT: Mr. Fein, you know the rules and
10 if you want to have a witness testify
11 about his reputation in the community,
12 you can do that, but as to outside
13 activities, they may be commendable,
14 but they are not relevant as far as
15 a tax case is concerned. I will sustain
16 the objection.

17
18 BY MR. FEIN:

19 Q Are you a patient of the doctor's?

20 A Yes, I am, sir.

21 Q What do you think of him professionally?

22 THE COURT: There is no objection, but we are
23 not here to test doctor's medical
24 qualifications. As a matter of fact,
25 we already have the opinion of on

1 witness. The doctor can be the most
2 excellent doctor in Western New York,
3 but it is absolutely irrelevant as far
4 as this tax case is concerned. Sustained.

5 BY MR. FEIN:

6 Q Mr. Lonardo - -

7 A Yes, sir.

8 Q Do you know whether or not the doctor incurred business
9 expenses in continuing his medical education?

10 A Yes. He incurred business expenses in that he observed
11 going to these educational courses every year faithfully
12 to keep up with the advanced techniques and know-how
13 in the medical profession. I know this to be a fact.
14 He has gone every year. In fact, at one time there
15 was a publication in our paper indicating his fellowship
16 or membership into a medical society.

17 MR. BURNS: Your Honor, I object again.

18 THE COURT: Mr. Fein, we have gone through this
19 two or three times.

20 MR. FEIN: No, your Honor.

21 THE COURT: He may belong to seven or eight
22 medical societies. It does not make any
23 difference. Let us get back to the
24 facts of the tax trial, please.
25

1 BY MR. FEIN:

2 Q Do you know of the hours that the doctor spent in his
3 office? Oh, no, excuse me. Strike the question.
4 When you went to pick up Doctor's records, at what
5 time in the evening or what time would you usually
6 go there?

7 A Usually, you could say that it was late evening,
8 nighttime, anywhere from between 9:00 p.m. until
9 1:00 a.m.

10 Q And he was still treating patients at that time?

11 A He was treating patients, I know, as late as 11:00,
12 11:30.

13 Q And what would he do there after, that you know of?

14 A Thereafter, why, he tried to make it a point to get
15 back to the hospital to make rounds again before the
16 morning rounds setup and make sure his more serious
17 or more critical patients were in a more stabilized
18 condition or check on their condition, let's put it
19 this way.

20 Q Did he ever tell you that, or were you ever present
21 when he treated patients and gave them - -

22 A Medication?

23 Q Medication without charging them for it?

24 A Oh, this I know he has done that, sir, because many
25 patients would come in while I was waiting for him in

1 need of injections, medication, what have you and the
2 doctor would offer ~~then~~ his supply of medications,
3 pills, give them their injections, if necessary, and
4 he did not charge them.

5 Q Mr. Lonardo, were you summoned to appear before the
6 grand jury and give testimony in this case? -

7 A Yes, I was, in April, I believe, of '73.

8 Q And did you give testimony in that case at that time?

9 A No, I did not. We came here around 9:30 or quarter of
10 10:00 that morning and we were advised, I believe it
11 was close to 2:00 o'clock in the afternoon that we were
12 not required to testify.

13 MR. FEIN: I have no further questions at this
14 time.

15 THE COURT: Mr. Burns, anything else?

16 MR. BURNS: Well, your Honor, I wonder, are
17 these exhibits being offered in evidence?

18 MR. FEIN: Yes, I am sorry.

19 THE WITNESS: There are some here, sir.

20 MR. FEIN: No, no. I offer Defendant's
21 Exhibit 26. Well, let's see, they start
22 here, 19. Well, I think it starts
23 with 19, your Honor.

24 THE COURT: Mr. Burns, is it necessary to
25 ask Mr. Lonardo any further questions?

- 1 MR. BURNS: Yes, your Honor, based on some of
2 these exhibits that are being intro-
3 duced.
- 4 THE COURT: He is going to offer them, but let
5 us go ahead and question.
- 6 MR. BURNS: All right. I think most of them
7 are acceptable, but I object to portions
8 of some of these exhibits.
- 9 THE COURT: All right. You may proceed with
10 questions.
- 11
- 12 REDIRECT EXAMINATION BY MR. BURNS:
- 13 Q Mr. Leonardo, would you look, please, at Defendant's
14 Exhibit 19 which I believe you earlier identified as
15 the expense book you kept for Dr. Booth's expenditures
16 for the calendar year 1967, is that correct?
- 17 A Number 19 is the record of 1967, yes, sir.
- 18 Q All right. Now, would you describe the book, please?
- 19 A The book is made up of individual sheets marked week
20 ending dates and it offers a section for, - this is
21 other expenditures by check and cash in one section
22 and merchandise and materials paid by cash and checks
23 in another.
- 24 Q What is on the other page?
- 25 A The other side is a section for a payroll and the

1 expenditures broken down and the total receipts from
2 business or profession.

3 Q There is a spot in this book to list total receipts on
4 a weekly basis from a business or profession?

5 A That's right.

6 Q Why have you none listed there?

7 A I did not make it a point to summarize it on a weekly
8 basis. I only summarized it at the end of the year.

9 Q Mr. Lonardo, where was this book maintained?

10 A While I was working on them, sir, it was in my home.
11 After the end of the year, they were returned to the
12 doctor.

13 Q And to your knowledge, did the doctor maintain them
14 until the present?

15 A To the best of my knowledge, they were given to him,
16 sir. What he did with them, I really don't know.

17 Q When was the last time you saw this book prior to
18 testifying today?

19 A I can't recall, but I know that I gave it to him after,
20 sometime after the return was prepared, but I don't
21 recall when I saw it again.

22 Q Did you see it within the past month?

23 A No. Oh, yes, I have. Yes, I have. I will take that
24 back. This was in Harold's, - Mr. Fein's possession.

25 Q Well, did you retain it or was it returned to you at

1 some point?

2 A Oh, no. It was never returned to me, sir, no, sir.

3 Q Now, you testified that you spoke with a Mr. Shields,
4 is that correct?

5 A Yes.

6 Q From Blue Shield of Western New York?

7 A Yes.

8 Q Do you know what department he works in?

9 A I called the Blue Shield organization, sir, and I don't
10 know.

11 Q Where was that, in Buffalo, New York?

12 A Yes, Buffalo, and I asked for the gentleman or the
13 person or persons, whoever it might have been, that
14 could help me with determining the status of the
15 information return pertinent to Dr. Booth's payment.

16 Q Do you know what division that was?

17 A No, I don't, sir. From memory, I don't recall.

18 Q Did you talk to anyone else at Blue Shield about the
19 matter?

20 A No, just this one man.

21 Q Did you write any letters to Blue Shield?

22 A No, I did not.

23 Q Do you know Mr. Shields' first name?

24 A No, I don't.

25 Q Did you provide Dr. Booth with Mr. Shields' name at

1 some point?

2 A I can't recall that I did. I did tell him I called
3 the organization, but I don't know whether I gave him
4 Mr. Shields' name as such. I don't recall.

5 Q Did you give Mr. Fein Mr. Shields' name at some point?

6 A At some point, yes.

7 Q And when was that?

8 A Not too distant past. I can't pinpoint the time.
9 Within the last, - gee, I don't know, year or so. I
10 don't recall vividly, sir.

11 Q Do you recall giving that name of Mr. Shields to any-
12 body within a short period of time after you called
13 Mr. Shields in 1969?

14 A No, I don't recall giving it to anyone else, nobody.

15 Q Did you give this to, - did you ever give this name
16 to any agents of the Internal Revenue Service who may
17 have interviewed at any time?

18 A I don't recall that I did because I don't recall that
19 anyone asked me, sir. I don't recall that I did.

20 Q Do you recall discussing previously, these tax matters
21 with agents of the Internal Revenue Service?

22 A No. The time that I was called here for an interview
23 it didn't refer to any Blue Cross, Blue Shield item,
24 as such.

25 Q Do you know if you gave Mr. Shields' name to anyone

1 else besides Mr. Fein?

2 A No, no one else.

3 Q You did not give it to Dr. Booth, though?

4 A I didn't say that I didn't, sir. I don't recall
5 that I did.

6 Q Now, Mr. Lonardo, I think you testified that when
7 the 1968 return was filed, you realized it was incomplete
8 in some respects?

9 A Yes.

10 Q And that is in regard to the Medicaid payments of Blue
11 Shield?

12 A The one marked "unavailable", that's right.

13 Q Do you know how Dr. Booth received payments from Blue
14 Shield.

15 A No. How he received it, no, I don't know.

16 Q You didn't know whether it was by check or by cash?

17 A Well, let's put it this way, I thought you mean how he
18 received them by way of the timing aspect. I assumed
19 there was checks. I am sure there would have to have
20 been checks. Not that there would have had to have been,
21 but normally, this is the way it was paid, but I have
22 no idea of the timing as such. I thought that was what
23 you were leading into.

24 Q You assumed that the manner of payment was by check?

25 A Yes.

- 1 Q And did you discuss with Dr. Booth whether there was
2 any readily available summary or total of the checks
3 that he had received for that year?
4 A No, I did not.
5 Q Did you know what happened to the checks after they
6 were received by Dr. Booth?
7 A No, I did not.
8 Q Did you inquire as to where they went?
9 A I did not.
10 Q Did you ~~say~~ any, - well, can you describe what you told
11 Dr. Booth with respect to the missing 1099 for 1969?
12 A For '69?
13 Q In 1969 for calendar year 1968.
14 A Oh, he was aware of the fact, - he was made aware of
15 the fact by me that we did not have a 1099 or information
16 return or letter of correspondence, nothing, with
17 regard to Medicare Part B from Blue Shield.
18 Q And when did you tell him that?
19 A This was after the calendar year '68 when we were
20 normally getting our other 1099's in the mail.
21 Q And did you discuss that fact with him when you took
22 the 1968 return to him for signature?
23 A I don't recall I did at that particular point in time.
24 I don't recall.
25 Q Did you ever entertain the thought of filing a request

1 for an extension of time to file a return?

2 A No. I was led to believe, or rather, I inferred from
3 conversation with Mr. Shields, that he would keep in
4 touch with us, we would keep in touch with him to
5 determine the availability of this figure so I could
6 file an amended return as quickly as humanly possible
7 on receipt of such information.

8 Q And now, Mr. Lonardo, you kept very detailed records
9 of Dr. Booth's expenses, did you not, in Defendant's
10 Exhibits 19 and 25?

11 A Yes, sir.

12 Q Every single check was accounted for as far as whether
13 it is a business expense or not?

14 A Yes.

15 Q Can you tell me what affect these business expenses
16 would have on Dr. Booth's taxable income for the years
17 in question?

18 A I don't follow you.

19 Q What affect would these, - what affect would these
20 business expenses have on Dr. Booth's taxable income
21 for the years in question?

22 A They are, - they serve the purpose of being deductible
23 expenses against his gross business income.

24 Q All right.

25 A But as taxable income, I don't follow.

- 1 THE COURT: The point you are trying to ~~make~~,
2 Mr. Burns, is that the more expenses
3 a man has, the less tax will be computed?
- 4 MR. BURNS: Yes, that is what I am asking.
- 5 THE COURT: Is that right, Mr. Lonardo?
- 6 THE WITNESS: The more tax?
- 7 THE COURT: No, the higher his expenses are,
8 the less his taxes will be.
- 9 THE WITNESS: Should be, right, everything else
10 being equal.
- 11
- 12 BY MR. BURNS:
- 13 Q These would have the effect of reducing his taxable
14 income, is that correct?
- 15 A Yes.
- 16 Q And consequently I assume would have the affect of
17 reducing the tax owed by him?
- 18 A Yes.
- 19 Q Was that the purpose these records were maintained
20 as carefully as they were?
- 21 A The purpose of the records being maintained ~~by~~ ^{say}
22 they were was to serve, primarily, as an information
23 source to prepare an income tax return. This was the
24 main purpose of the bookkeeping record.
- 25 Q And were they maintained carefully by you?

1 A Yes, sir. I would like to think that they were. In
2 my opinion, they were.

3 MR. BURNS: All right. I have no further
4 questions. Your Honor, I would like to,
5 I think we could have some discussion
6 about the admissibility of some of these
7 exhibits, though.

8 MR. FEIN: May I have a couple of questions,
9 your Honor.

10 THE COURT: All right, ask the witness.

11
12 RE-CROSS EXAMINATION BY MR. FEIN:

13 Q Weren't you as careful about reporting the income for
14 the doctor as you were the expenses?

15 A I would like to think I was, Mr. Fein. I think I have
16 to say that I was.

17 THE COURT: Mr. Fein, there is no objection
18 to this, but I mean it is up to the
19 jury to make this determination from
20 all of the testimony in this case and
21 it does not add anything to it. I do
22 not mean to criticize Mr. Leonardo at
23 all, but it does not add anything to
24 it for him to say, "Yes, I kept the
25 returns carefully". It is up to the

1 jury to make that determination from all
2 the facts in the case and that is not a
3 fact. That is his opinion. It just does
4 not help. Next question. Do not ask
5 anymore questions like that. Next
6 question.

7
8 BY MR. FEIN:

9 Q All right. You prepared doctor's income tax return
10 based on 1099's or W2's is that right?

11 A That is absolutely right.

12 Q And were those correct to the best of your ability
13 and to your knowledge?

14 A Yes, they were.

15 Q Okay. Now, there has been a lot of talk, several
16 remarks made in connection with what you did when you
17 went to see the doctor when you handed him the return
18 for him to file. What did you say to him or what did
19 he say to you, if anything?

20 A I was lucky to get in to him for just a few minutes - -

21 THE COURT: Wait a minute, Mr. Lonardo. Just
22 listen to the question and answer the
23 question.

24 THE WITNESS: Okay.

25 THE COURT: When you gave him the returns, what

1 did he say to you and what did you say
2 to him?

3 THE WITNESS:

4 He didn't say anything to me
5 because I told him I wanted to see him
6 with regard to the return and the extent
7 of our conversation when I gave him the
8 return was this: "Doctor, your 1960"
9 something "return", whatever it is,
10 "1968 shows that you owe 'X' number of
11 dollars and now you have to allow for
12 meeting your obligation on a quarterly
13 basis for the current year on this kind
14 of a payment plan, so many dollars every
15 quarter on the estimate 1040ES form",
and that was it.

16 MR. FEIN:

No further questions.

17 MR. BURNS:

No questions.

18 THE COURT:

19 No questions. Ladies and gentlemen,
20 we will take a short break now. The
21 lawyers and I have something to talk
22 about and we will be back in probably
23 ten or fifteen minutes. We will be in
24 recess. Mr. Lonardo, you stay here in
25 case there is a question about any of
these papers.

W. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

COMPARISON OF INCOME

Government Exhibit 47.

87a

BUSINESS INCOME		1965	1966	1967	1968	1969
Blue Shield		19 5241 00	21 416 50	21 585 58	19 087 25	
Medicare-Part B		NONE	713 80	1 833 00	644 10	
City of Niagara Falls		NONE	46 00	109 25	42 00	
Wier, Co. Social Svcs		12 344 05	18 260 27	32 324 35	11 747 60	
NY State Insur Fund		NONE	NONE	542 35	446 00	
Office Redprints		6 344 00	4 108 00	1 292 00	1 362 00	
Gross Sub-Total		38 222 05	44 044 57	58 090 53	62 692 45	
Net Sub-Total		25 608 36	34 850 45	34 254 22	34 358 71	
PAGES						
Nuclear Materials		1 307 60	1 199 90	2 205 98	2 399 80	
Various		NONE	174 50	10 25	NONE	
Net Sub-Total		1 307 60	1 199 90	2 205 98	2 399 80	
INTEREST & OTHER						
Marine Midland		65 17	297 07	426 82	777 72	
J. Hancock		NONE	NONE	10 10	144 13	
IPC (Nat'l Inv.)		NONE	NONE	NONE	12 71	
Falls Budget		NONE	22 28	250 00	250 00	
Capital Gains		1 23	7 87	16 67	13 15	
Various						
Net Sub-Total		66 40	327 72	763 65	1 118 00	
Net Grand Total		26 922 36	27 281 66	37 324 25	37 856 57	
2650 SE Adjustment		570 51	821 54	819 02	1 235 71	
Net (ADJ) Grand Total		26 441 85	26 211 52	36 605 17	36 240 76	

GOVERNMENT
EXHIBIT
47